IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 23 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)

Versus

JAGFASHION TEXTILE MILLS PVT.LTD. - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
NOTICE UNSERVED for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 01/12/2005

ORAL JUDGMENT

(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1.The Income Tax Appellate Tribunal, Ahmedabad Bench “A”, has referred the following question

under Section 256 (1) of the Income Tax Act, 1961 (the Act), at the instance of the Commissioner of Income Tax.

"Whether, the Appellate Tribunal is right in law and on facts in excluding the amount of Rs.5,33,366/- on account of sales commission while quantifying disallowance under section 37 (3A) ?"

2. The assessment year is 1985-86 and the relevant accounting period is 30-6-84.

3. While framing assessment under Section 143 (3) of the Act, the Assessing Officer disallowed an amount of Rs.5,15,038/- towards sales commission considering the same to be sales promotion expenses. In assessee's appeal, the Commissioner of Income Tax (Appeals) confirmed the order of the Assessing Officer. However, the Commissioner of Appeals recorded a finding of fact that the commission had been paid by the appellant for effecting sales at various places, but in absence of any written agreement upheld the assessment order.

4.In the further appeal by the assessee, the Tribunal followed the decisions of the Calcutta High Court in the cases of CIT vs. Hindustan Motors Ltd. (1991) 192, ITR 619 and CIT vs Sutlej Cotton Mills Ltd. (1992) 194 ITR 66 and allowed the appeal. The Tribunal directed that the sum of Rs.5,33,336/- paid towards sales commission be excluded while quantifying disallowance under Section 37 (3A) of the Act.

5.Heard Mr. M.R.Bhatt, learned Senior Standing Counsel for the applicant-revenue. The board shows the endorsement "respondent not served". However, considering the view that the Court is inclined to take in the matter, it is not necessary to await service.

6.Mr. M.R.Bhatt has very fairly pointed out that the controversy in issue stands concluded by a decision of this Court rendered in the case of Commissioner of Income Tax vs. Zippers India, I.T.R No.141 of 1994, decided on 5/10/2005 in favour of the assessee. In the circumstances,

it is not necessary to set out the facts and contentions in detail.

7. Applying the ratio of the decision in the case of Commissioner of Income Tax vs. Zippers India (Supra) to the facts of the present case, it is held that the Tribunal was justified in law and on facts in excluding the amount of Rs.5,33,366/- on account of sales commission while quantifying disallowance under Section 37 (3A) of the Act.

8. The question is accordingly answered in the affirmative i.e. in favour of the assessee and against the revenue. The reference stands disposed of accordingly. There shall be no order as to costs.

(D.A.MEHTA, J.) (H.N.DEVANI,J.)

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